

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

RONALD J. SREIN and	:	CIVIL ACTION
R.J. SREIN CORP.	:	
	:	
	:	
v.	:	
	:	
FRANKFORD TRUST COMPANY	:	
(NOW KNOWN AS KEY TRUST COMPANY)	:	NO. 99-2652

**M E M O R A N D U M**

ROBERT F. KELLY, J.	JULY     , 2001
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This lawsuit involves claims by Ronald J. Srein, Individually and R.J. Srein Corp. against the Frankford Trust Company (“Frankford” or “Bank”) for negligence and violation of an alleged fiduciary duties under the Employee Retirement Income Security Act (“ERISA”), 29 U.S.C. § 1001, et seq. The Court determined that Plaintiffs were entitled to a jury trial on the negligence claim, but not under ERISA. Prior to the start of trial, the Court determined that it would try the ERISA claim to an advisory jury.

On the negligence claim, the jury determined that the causal negligence attributable to the Plaintiffs was 70%. On the ERISA claim, the jury determined that Frankford did not act as a fiduciary with respect to the R.J. Srein Corp. Plans.

With respect to Plaintiffs’ ERISA claims, we make the following:

**FINDINGS OF FACT**

1. Ronald J. Srein is a college graduate, a successful businessman and a sophisticated investor.

2. Ronald J. Srein formed the R.J. Srein Corp. in the mid 1980's. He is its only employee and the sole stockholder. Neither Ronald J. Srein nor R.J. Srein Corp. had any business dealings with Defendant Frankford prior to January or February 1993.

3. In the early 1990's, Mr. Srein was introduced to viatical investments. These are made through a viatical settlement company, which locates individuals diagnosed with potentially terminal disease. These individuals can obtain an immediate payment of part of the face value of their insurance policy in exchange for assigning all or part of the life insurance policy. This enables the insured to obtain money which would otherwise be unavailable to him until after his death. When the insured passes away, the viatical settlement company collects the policy proceeds, pays the investor the money he advanced under the agreement and the balance is divided between the investor and the settlement company in accordance with their agreement.

4. In the early 1990's, Mr. Srein invested in numerous participation agreements on life insurance policies through American Life Resources Corporation ("ALRC"), a viatical settlement company. A "participation agreement" is a contractual document between an investor (the "participant") and the viatical settlement company, the subject of which is an existing individual life insurance policy.

5. Mr. Srein knew that the principals of ALRC were Steve Simon and Craig Silverman. Mr. Silverman was Mr. Srein's main contact at ALRC. All of Mr. Srein's investments through ALRC matured, that is, the insured passed away, and Mr. Srein received the life insurance policy proceeds, or the contract was repurchased. Mr. Srein was satisfied with all of those investments and the return that he received. No representative of Frankford played any role in Srein's decision to invest in these investments.

6. The procedure followed with ALRC required payments for the investments to be made to

an escrow agent. Death benefits were to be paid by the insurance companies through that escrow agent. The escrow agent would then distribute to the investor and the viatical settlement company the difference between the onetime lump payment and the death benefit in accordance with the agreement. In 1992, Craig Silverman parted ways with Steve Simon to form his own viatical settlement company called FINDCO, Inc. ALRC was eventually sold to an entity with which Mr. Srein was not familiar. Therefore, Mr. Srein continued to deal with Mr. Silverman and transferred his business to the new entity FINDCO. In September and October of 1992 and April of 1993, Mr. Srein individually entered into six (6) participation agreements with FINDCO. The procedures followed by FINDCO were the same as those that had been used by ALRC. As a matter of fact, the same forms were used and FINDCO used Mr. Neil Katims, the same escrow agent used by ALRC. No representative of Frankford Trust played any part in Mr. Srein's decision to invest in these six (6) participation agreements.

8. In early 1993, the R.J. Srein Corporation, of which Mr. Srein is the only employee, wanted to invest some of the funds in its retirement plans in participation agreement with FINDCO. The Trustee of the Srein Plans at the time, Eagle Retirement and Investment Planning, would not allow such investments by retirement plans on which it was trustee because such investments were not registered. Craig Silverman recommended that Mr. Srein contact Laraine Daly, a trust officer at the Frankford Trust Company, to see if they would act as trustee on accounts investing in participation agreements through FINDCO.

9. Neither Mr. Srein nor R.J. Srein Corporation had any business dealings with Frankford Trust prior to January or February of 1993. Mr. Silverman, on the other hand, did have a relationship with Frankford Trust that dated back at least three years. Mr. Silverman had been introduced to the Frankford Trust by his attorneys, Mesirov, Gelman, Jaffe and Jamieson.

10. Laraine Daly contacted Mr. Srein and facilitated setting up qualified ERISA plans for R.J. Srein Corp. at Frankford Trust and transferring assets from Eagle Retirement to Frankford Trust. Laraine Daly understood that Mr. Srein was moving the R.J. Srein Corp. Plans to Frankford Trust for the purpose of, among other things, investing in participation agreements on viatical settlement contracts. On February 11, 1993, R. J. Srein Corp. and the Bank entered into two separate retirement plan agreements: an “adoption Agreement” relating to a Money Purchase Pension Plan, and an “Adoption Agreement” relating to a Profit Sharing Plan. See Exhibits D-52 and D-53 respectively. These Adoption Agreements reflect certain selections between available alternatives (with respect to, among other things, investing and the exercise of investment discretion). The Bank exercised no investment discretion according to the Plan Documents; its role is of a limited nature.

11. Frankford Trust did not have any rules against non-registered investments, such as participation agreements in viatical settlement contracts, being held in investment plans for which it acted as trustee. Mr. Srein selected the investments for the plans. Frankford Trust retained the authority to refuse to accept investments which would violate the provisions of ERISA.

12. Prior to the transfer of the Plans to Frankford Trust in February of 1993, Mr. Srein was anticipating that the R.J. Srein Corp. Money Purchase Plan would enter into a participation agreement to purchase an existing life insurance policy on Errol Chamness. It was for this reason that Mr. Srein moved the R.J. Srein Corp. Plans to Frankford Trust, for the purpose of, among other things, investing in participation agreements on viatical settlement contracts. At Mr. Srein’s request, once Laraine Daly had prepared the necessary documentation and money was transferred from Eagle Retirement to Frankford Trust, Ms. Daly wired the funds from the Plan to facilitate the purchase of the Chamness Policy. No representative of Frankford Trust played any role in the

negotiations by and between R.J. Srein Corp. and FINDCO and/or between FINDCO and Mr. Chamness relating to the underlying terms of the investment.

13. On February 17, 1993, two weeks after selling a 100% interest in the Chamness Policy to R.J. Srein Corp., FINDCO and Silverman purported to sell the same policy to another investor.

14. Then, on June 3, 1993, Frankford Trust, as trustee for the R.J. Srein Corp. Profit Sharing Plan, and the R.J. Srein Profit Sharing Plan, entered into a participation agreement with FINDCO to purchase 100% of American National Insurance Company Policy No. 828758 on the life of Lloyd Madsen ("Madsen Policy"). Laraine Daly signed the participation agreement on the Madsen Policy for Frankford Trust as trustee for R.J. Srein Corp. Profit Sharing Plan. Ronald J. Srein signed the participation agreement on behalf of the R.J. Srein Corp. Profit Sharing Plan. In order to fund the transaction, Frankford Trust executed the checks for the purchase of the Madsen Participation Agreement (one such check was to a non-escrow agent entity). No representative of Frankford Trust played any role in the negotiations by and between R.J. Srein Corp. and FINDCO and/or between FINDCO and Mr. Madsen relating to the underlying terms of the investment.

15. Because the participation agreements were not registered investments, they did not have pre-existing numbers assigned to them. Frankford Trust assigned the participation agreements held in the Plans, including the agreements on the Madsen and Chamness policies, arbitrary, random numbers.

16. On October 28, 1994, Frankford Trust entered into a participation agreement on behalf of Stephen Matt Richards to purchase 28% of the Madsen policy (American National Life Policy No. 828758), the same underlying Madsen Policy that was the subject of the participation agreement in the R.J. Srein Corp. Profit Sharing Plan. Laraine Daly was a signatory on behalf of Frankford Trust as trustee for the Richards Plan. Thus, Laraine Daly was the trust officer both for the Srein

Plan and the Richard Plan, and she signed on behalf of each to purchase two participation agreements based on the same insurance policy. Since the Srein Plans had purchased a 100% interest in the Madsen Policy 16 ½ months earlier, there was obviously no percentage left in the Madsen policy for anyone else to legitimately invest in. Frankford had in its possession, the participation agreement in the Madsen policy on behalf of the Srein Plan and the participation agreement in the same Madsen policy, on behalf of the Richards Plan. Because of the 16 ½ month separation between the two purchases of the same policy, neither Laraine Daley nor the Frankford Trust recognized the overlap in the two transactions or that both participation agreements were based on the same policy. Because of this, neither notified Mr. Srein.

17. Although FINDCO had double sold all of the policies in which the Plans and Mr. Srein, individually had invested (subsequent to the successful investment with ALRC), the proceeds of certain of those policies had not been paid out to the second investors, to whom the double sale had been made, until points in time after October 1994.

18. On May 29, 1995, J. Lloyd Madsen died. FINDCO did not notify Mr. Srein or R.J. Srein Corp. that Mr. Madsen had died.

19. On June 26, 1995, Craig Silverman sent to Frankford Trust a check in the amount of \$27,499.86, identified as the Richards Plan's percentage of the death benefit of the Madsen Policy. Frankford Trust received the payment of the Madsen policy proceeds and paid it out to the Richards' Plan. Frankford Trust did not recognize that these proceeds related to the same Madsen policy, in which the R.J. Srein Corp. Profit Sharing Plan had taken a 100% interest. For this reason, Frankford did not tell Mr. Srein that it had received the Madsen Policy proceeds as payable to the Richard's Plan, did not tell Mr. Srein that Mr. Madsen had died, and did not check to see if Mr. Srein had been paid on the participation agreement on the Madsen Policy.

20. On August 31, 1994, Mr. Chamness, the insured whose policy was the subject of a participation agreement on the R.J. Srein Corp. Money Purchase Plan, died. FINDCO did not notify Mr. Srein or the R.J. Srein Corp. that Mr. Chamness had died. The proceeds on the Chamness policy were paid to D.P. Partnership on December 15, 1994.

21. Prior to receiving correspondence from Mr. Srein's lawyer in March of 1998, neither Laraine Daly nor anyone else at Frankford realized that the Madsen policy had been "double sold."

22. Frankford had no direct contractual relationship with Mr. Srein, individually, other than the relationship with R.J. Srein Corp. (i.e. Mr. Srein maintained no personal account at the Bank).

### CONCLUSIONS OF LAW

1. "Except as otherwise provided in subparagraph (B), a person is a fiduciary with respect to a plan to the extent (i) he exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets, (ii) he renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or (iii) he has any discretionary authority or discretionary responsibility in the administration of such plan. Such term includes any person designated under section 1105(c)(1)(B) of this title." 29 U.S.C. § 1002(21)(A).

2. A person or entity who performs only ministerial services or administrative functions within the framework of policies, rules, and procedures established by others is not an ERISA fiduciary. Arizona State Carpenters Pension Trust Fund v. CitiBank (Arizona), 125 F.3d 715 (9<sup>th</sup> Cir. 1997).

3. Under the Plan Documents, Frankford was not to exercise any investment discretion or provide any investment advice whatsoever. Frankford's role was to faithfully follow and execute the

directions of the employer or plan administrator with regard to the purchase of investments on behalf of R.J. Srein Corp.'s Plans.

4. Because of its limited function, Frankford was not an ERISA fiduciary.

5. Frankford has faithfully carried out all instructions given to it by Mr. Srein or behalf of the R.J. Srein Corporation.

6. The Bank has no liability to Mr. Srein, individually, where he did not do any business with the Bank in his individual capacity.

7. Because of the foregoing, we enter the following Order.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

RONALD J. SREIN and	:	CIVIL ACTION
R.J. SREIN CORP.	:	
v.	:	
FRANKFORD TRUST COMPANY	:	
(NOW KNOWN AS KEY TRUST COMPANY)	:	NO. 99-2652



O R D E R

AND NOW, this            day of JULY, 2001, a Verdict is hereby entered in favor of  
Defendant Frankford Trust Company (now known as Key Trust Company) and against the plaintiffs  
Ronald J. Srein and R.J. Srein Corp.

BY THE COURT:

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ROBERT F. KELLY,            J.